

# CIRCULAR TO MEMBERS

## PROFESSIONAL INDEMNITY INSURANCE

### MYTHS AND MYSTERIES

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PJ Dacomb

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For many years, the planning profession, was spared the obligation of having to purchase Professional Indemnity Insurance (the dreaded "PI" requirement). Planners' clients, from the public and private sector simply did not insist on planning consultants having to prove that they held adequate PI cover.

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It was a popular misconception on the part of many planners that the risk profile of a consulting planner was extremely low and did not generally justify the costs associated with PI cover. How things have changed!

For those planners who regularly prepare and submit tenders in response to invitations from various government departments and institutions such as SAPOA, the CSIR, various state-owned enterprises, etc. will know that, more recently, it has become a standard requirement for tendering consultants to submit proof of adequate PI insurance cover, so as to qualify for the tender.

Private sector clients (generally those listed on the stock exchange or of sufficient size and profile), have also started to demand proof of PI insurance when considering to appoint a planning consultant for a high cost/high value project.

Those planners who have not ventured into the veritable minefield of PI insurance often question what amount of PI cover would be reasonable/sufficient, depending on varying circumstances. Of course, there is no single answer to this question and it will depend largely on the annual turnover of the planning firm, which may define the risk profile on the part of the insurance underwriter.

By way of example, recent quotes from different underwriters provided for:

*"... what amount of PI cover would be reasonable/sufficient ....?"*

- A cover of up to R10 Million at a cost of approximately R800 per month.
- A cover of up to R4 million for a monthly spend of R R4 367.

Unfortunately, each planning firm will fall in a different risk profile category and will have to rely on advice from an insurance broker to arrive at a properly informed number. Planners may wish to think differently about the risk of having to dip into the PI insurance fund from time to time. Based on feedback from members, the following are a few examples of circumstances which have or led or may in future lead to claims for damages on the part of affected parties (mostly disgruntled clients):

### ■ Mistaken identity?

In a bizarre turn of events, the planning firm (a registered company) was challenged on its *locus standi* (by reference to its power of attorney issued by the client) when appearing at a hearing in a disputed land development application matter. It was found that the auditors of the planning firm had erred in registering the company name. Also, the company registration number had been incorrectly displayed on the letter head and related documents. The result was that, for technical reasons, the point *in limine* raised with regard to the identity of the planning firm resulted in the matter being struck from the roll and the application having to commence *de novo*. The planner was faced with the prospect of a possible claim for damages allegedly suffered by the client.

### ■ Finger trouble?

A number of examples suggest that planners, being human after all, are prone to committing errors of calculation (land areas, potential floor area, etc). Depending on the status of a land development application, it may result in an uncomfortable set of circumstances when a client realises that the calculation error on the part of the planner has resulted in a diminished development potential and may require a repeat of the land development application process. A claim for damages for lost time and associated costs may be justified under such circumstances.

### ■ Overstepping boundaries?

The SAACPP has previously reported on the growing number of consulting planners being taken to task on the basis of alleged professional misconduct. The complaints/allegations in this regard are often raised by clients, fellow professionals, or disgruntled affected parties (objectors to land development applications, etc.). Depending on the nature of the complaint and the prevailing circumstances, it may well result in the accused planner having to defend his/her position by employing the services of a legal firm. Whilst this may not necessarily result in claims for damages, the costs involved in defense of the complaint/allegation may well justify professional indemnity insurance.

The above examples are a few to consider in deciding on whether or not a consulting planner requires PI insurance. Also consider that, apart from covering potential claims and legal costs, certain PI Insurance packages also cover:

- Liability Following Employee Dishonesty
- Joint Venture / Consortium Agreements
- Defamation
- Fee Recovery
- Loss of Documents
- Statutory Defence Costs
- Wrongful Arrest

Whilst it remains entirely in the discretion of the individual planning firm to decide on Professional Indemnity Insurance (or not), the Association urges all members to purchase Pi Insurance to the extent that it may be justified, as this is part of your professional responsibility in your endeavours to serve the best interests of your instructing clients.